

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT P. THOMAS,

Plaintiff-Appellant,

v

INTERCOUNTY DRAIN BOARD FOR  
CRAPEAU CREEK DRAIN, MACOMB  
COUNTY PUBLIC WORKS OFFICE,  
ANTHONY V. MARROCCO, and MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,<sup>1</sup>

Defendants-Appellees.

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UNPUBLISHED

July 9, 2002

No. 230185

Macomb Circuit Court

LC No. 98-002109-CE

Before: Neff, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing his claims pursuant to MCR 2.116(C)(8) and (C)(5) against defendants in this environmental law case. On appeal, plaintiff argues only that the trial court erred in dismissing his claims brought pursuant to the Michigan Environmental Protection Act (MEPA).<sup>2</sup> We reverse in part and affirm in part.

As a preliminary matter, all parties present arguments regarding whether this appeal is moot because the drain project has been completed. Plaintiff correctly argues that the issue is not moot because the relief of restoration could be granted even though the project is completed and is an appropriate remedy in MEPA claims. *Cipri v Bellingham Frozen Foods, Inc.*, 235 Mich App 1, 5; 596 NW2d 620 (1999).

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<sup>1</sup> In February 2000, all claims against defendants City of New Baltimore, Greg Bayer, and Eric Wiederhold were resolved by stipulation. Defendant, Bruce DeFrane, d/b/a B. D. Johnson Excavating, was dismissed without prejudice on March 30, 2000. Defendants Intercounty Drain Board for Crapeau Creek Drain, Macomb County Public Works Office (MCPWO), and defendant Marrocco will be referred to collectively as defendants Drain Board.

<sup>2</sup> MCL 324.1701 *et seq.*, the provisions of which are contained in Article I, Part 17 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.*

Plaintiff argues that the trial court erred in granting defendants Drain Board's motion for summary disposition and in denying plaintiff's motion for leave to file a first amended complaint because plaintiff has standing to bring claims under the MEPA. However, the trial court simultaneously granted defendants Drain Board's motion for summary disposition and *granted* plaintiff's motion for leave to file his first amended complaint. The trial court limited the amended complaint to the Freedom of Information Act (FOIA)<sup>3</sup> claim finding that, as to the other claims, plaintiff lacked standing or failed to state a claim. Thus, plaintiff erroneously raises the question whether the trial court erred in denying his motion for leave to file his amended complaint. We agree that the trial court erred in granting summary disposition of plaintiff's MEPA claims based on MCR 2.116(C)(8) and (C)(5).

This Court reviews a trial court's decision to grant summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Summary disposition pursuant to MCR 2.116(C)(8) may be granted on the ground that the opposing party has failed to state a claim on which relief can be granted. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts and construed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Id.*<sup>4</sup>

When reviewing a ruling under MCR 2.116(C)(5), finding that the plaintiff lacked standing, this Court considers pleadings, depositions, admissions, affidavits, and other evidence and reviews the ruling de novo. *Wortelboer v Benzie Co*, 212 Mich App 208, 220; 537 NW2d 603 (1995).

Central to this appeal is the interpretation of provisions of the MEPA. Statutory interpretation is a question of law that this Court reviews de novo. *Nicholas v Meridian Charter Twp Bd*, 239 Mich App 525, 536; 609 NW2d 574 (2000). The first criterion in determining intent is the language of the statute. *Id.* The Legislature is presumed to have intended the meaning it plainly expressed. *Id.* If the language of a statute is clear and unambiguous, judicial construction is generally not necessary or permitted. *Id.*

Plaintiff correctly argues that he has standing to bring a claim under the MEPA. MCL 324.1701(1) provides:

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<sup>3</sup> MCL 15.231 *et seq.* This claim is not a subject of this appeal as it was brought only against parties who were dismissed by stipulation in the lower court.

<sup>4</sup> We note that plaintiff's pleadings regarding defendant Michigan Department of Environmental Quality (MDEQ) are less than precise. Our decision is without prejudice to the filing of motions for summary disposition based on MCR 2.116(C)(10).

The attorney general or *any person* may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.

The MEPA permits *any person* to seek declaratory and injunctive relief. *Ray v Mason Co Drain Comm'r*, 393 Mich 294, 304; 224 NW2d 883 (1975); *Michigan State Hwy Comm v Vanderkloot*, 392 Mich 159, 184; 220 NW2d 416 (1974); *Genesco v Michigan Dep't of Environmental Quality*, 250 Mich App 45; \_\_\_ NW2d \_\_\_ (2002); *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 487; 608 NW2d 531 (2000). Therefore, the trial court erred in granting summary disposition of plaintiff's MEPA claims based on MCR 2.116(C)(5).

In *Nemeth v Abonmarche Development Co*, 457 Mich 16; 576 NW2d 641 (1998), the Michigan Supreme Court addressed the issue of what constitutes a prima facie MEPA claim. In *Nemeth*, the defendants began construction of a condominium development without obtaining approval of a soil erosion plan. *Id.* at 20. The plaintiffs filed an MEPA claim when a storm caused sand to blow off the construction site into their yards and homes. *Id.* The trial court enjoined the development until the defendants implemented erosion-control measures. *Id.* The trial court held that the Soil Erosion and Sedimentation Control Act, MCL 324.9101 *et seq.*, were environmental standards, and that the defendants' failure to adhere to those standards established that natural resources were likely to be harmed. *Id.* at 20-23. On this basis, the trial court found that the plaintiffs succeeded in setting forth a prima facie case. *Id.* This Court reversed the trial court's decision. *Id.* at 31-32. The Supreme Court affirmed the trial court's decision stating that § 1701(2) of the MEPA, which requires the trial court to examine existing pollution control standards, makes those standards a necessary component of the trial court's evaluation of a prima facie MEPA claim. *Id.* at 29-30. The Court held that when a statute, rule, or other standard is meant to protect against the pollution or impairment of a natural resource, and the defendant has violated that standard, that is sufficient to show that the natural resource has been, or is likely to be, harmed. *Id.* at 36. This decision is in keeping with the MEPA provision that the MEPA is "supplementary to existing administrative and regulatory procedures provided by law." MCL 324.1706. It is also consistent with the legislative intent that the MEPA be read in pari materia with other environmental statutes. *Michigan Oil Co v Natural Resources Comm*, 406 Mich 1, 33; 276 NW2d 141 (1979).

Plaintiff's MEPA claims were presented in his first amended complaint. It is apparent from reading the first amended complaint that plaintiff did not individually and solely plead violations of the provisions that he pleaded as pollution control standards, as the trial court ascertained; but rather, that violations of those provisions caused environmental damage justifying judicial intervention under MEPA. Based on *Nemeth*, plaintiff's claims succeed in setting forth MEPA claims on which relief may be granted. Also, this Court has previously held that "Administrative action, such as the issuance of permits to drill wells, is a sufficient basis on which to invoke the MEPA." *Wortelboer, supra* at 220, citing *Committee for Sensible Land Use v Garfield Twp*, 124 Mich App 559; 335 NW2d 216 (1983). Therefore, defendants' argument that mere failure to obtain or issue permits cannot provide a basis for plaintiff's MEPA claims is without merit. Additionally, defendants' arguments that the cited provisions either do not require permits under the facts of the case or that defendants complied with the permit

requirements do not provide reasons for affirming the trial court's summary disposition pursuant to MCR 2.116(C)(8), which looks at the pleadings alone. Therefore, the trial court erred in granting summary disposition of plaintiff's claims pursuant to MCR 2.116(C)(8). Plaintiff's complaint sets forth claims under the MEPA for which relief can be granted. The trial court erred when it treated plaintiff's MEPA claims as claims brought under the provisions that plaintiff used to establish environmental pollution control standards.

Plaintiff also argues that the trial court erred in ruling that it did not have jurisdiction over plaintiff's claims against the MDEQ as they should have been brought before the Court of Claims. The trial court's decision, that it did not have jurisdiction over plaintiff's claims against defendant MDEQ, was erroneous because the circuit court has jurisdiction over proceedings for declaratory or equitable relief, MCL 600.6419(4), and the MEPA provides the circuit court with jurisdiction, MCL 324.1701(1).

Finally, plaintiff requests that this Court order, on remand, that the lower court shall grant plaintiff leave to file his submitted, but not previously heard, motion for sanctions against defendants so that the lower court can properly fulfill its responsibility to supervise the ethical conduct of defense counsel. This issue was not raised in plaintiff's statement of questions presented. Therefore, the issue is not properly before us on appeal and this Court will not address it. MCR 7.212(C)(5); *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Janet T. Neff  
/s/ Richard Allen Griffin  
/s/ Michael J. Talbot